

support a new stock. Under this change, abundance, PBR, and mortality estimates of the prospective stocks would be included in a SAR. The identification of management units of coastal bottlenose dolphins in the Western North Atlantic in the 2002 SARs is an example of a previous use of this concept although the terminology was different (management units versus prospective stocks). The 2004 draft SARs for the Hawaii stock of false killer whales identifies prospective stock structure in accordance with this proposed change.

In unusual situations, the formula Congress added to the MMPA to calculate PBR ($N_{min} * 0.5R_{max} * Fr$) results in a number that is not consistent with the narrative definition of PBR (the maximum number of animals, not including natural mortality, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its OSP). Such a situation arises when a stock is below its OSP and is declining or stable, yet human-caused mortality is a not a major factor in the population's trend. For example, Hawaiian monk seals are endangered, declining, and below OSP (based upon the abundance prior to the 1970s), yet human-caused mortality is insufficient to account for the decline or a failure to increase. A limited removal would not reduce the population's ability not reach or maintain its OSP after the major factors affecting the stock have been identified and addressed.

One option for PBR in these situations is to estimate PBR as zero. However, a PBR of zero may not reflect the concept of PBR included in the narrative definition. Furthermore, a PBR of zero would be inconsistent with Congress' concerns about the need to establish a procedure that allows for occasional taking of threatened or endangered species incidental to commercial fishing (See House Report 103-439 (March 21, 1994) at 30.) Therefore, in these unusual situations, NMFS may report PBR as "undefined". The draft 2004 SAR for Hawaiian monk seals has been changed in accordance with this proposed change to the guidelines.

Dated: November 15, 2004.

P. Michael Payne

*Acting Director, Office of Protected Resources,
National Marine Fisheries Service.*

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COMMODITY FUTURES TRADING COMMISSION

Fees for Reviews of the Rule Enforcement Programs of Contract Markets and Registered Futures Association

AGENCY: Commodity Futures Trading Commission.

ACTION: Establish the FY 2004 schedule of fees.

SUMMARY: The Commission charges fees to designated contract markets and the National Futures Association (NFA) to recover the costs incurred by the Commission in the operation of a program which provides a service to these entities. The fees are charged for the Commission's conduct of its program of oversight of self-regulatory rule enforcement programs (17 CFR part 1 Appendix B) (NFA and the contract markets are referred to as SROs).

The calculation of the fee amounts to be charged for FY 2004 is based on an average of actual program costs incurred in during FY 2001, 2002, and 2003, as explained below. The FY 2004 fee schedule is set forth in the **SUPPLEMENTARY INFORMATION**. Beginning with the FY 2004 fee, electronic payment of fees is required.

EFFECTIVE DATES: The FY 2004 fees for Commission oversight of each SRO rule enforcement program must be paid by each of the named SROs in the amount specified by no later than January 18, 2005.

FOR FURTHER INFORMATION CONTACT: Stacy Dean Yochum, Counsel to the Executive Director, Commodity Futures Trading Commission, (202) 418-5160, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. For information on electronic payment, contact Stella Lewis, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, (202) 418-5186.

SUPPLEMENTARY INFORMATION:

I. General

This notice relates to fees for the Commission's review of the rule enforcement programs at the registered futures associations and contract markets regulated by the Commission.

II. Schedule of Fees

Fees for the Commission's review of the rule enforcement programs at the registered futures associations and contract markets regulated by the Commission:

Entity	Fee amount
Chicago Board of Trade	\$81,264
Chicago Mercantile Exchange ..	318,729
Kansas City Board of Trade	11,866
New York Mercantile Exchange ..	136,622
Minneapolis Grain Exchange ...	6,605
National Futures Association	110,946
New York Board of Trade	51,075
BrokerTec Futures Exchange ¹	12,126
Total	\$729,233

¹ BrokerTec Futures Exchange, now known as Exchange Place Futures Exchange, LLC, ceased operations in November 2003. As of January 30, 2004, Exchange Place Futures is wholly owned by U.S. Futures Exchange (USFE).

III. Background Information

A. General

The Commission recalculates the fees charged each year with the intention of recovering the costs of operating this Commission program.² All costs are accounted for by the Commission's Management Accounting Structure Codes (MASC) system, which records each employee's time for each pay period. The fees are set each year based on direct program costs, plus an overhead factor.

B. Overhead Rate

The fees charged by the Commission to the SROs are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide overhead direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs consist generally of the following Commission-wide costs: Indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 117 percent for fiscal year 2001, 129 percent for fiscal year 2002, and 113 percent for fiscal year 2003. These overhead rates are applied to the direct labor costs to calculate the costs of oversight of SRO rule enforcement programs.

C. Conduct of SRO Rule Enforcement Reviews

Under the formula adopted in 1993 (58 FR 42643, Aug. 11, 1993), which

² See Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a and 31 U.S.C. 9701. For a broader discussion of the history of Commission Fees, see 52 FR 46070 (Dec. 4, 1987).

appears at 17 CFR Part 1 Appendix B, the Commission calculates the fee to recover the costs of its review of rule enforcement programs, based on the three-year average of the actual costs of performing reviews at each SRO. The cost of operation of the Commission's program of SRO oversight varies from SRO to SRO, according to the size and complexity of each SRO's program. The three-year averaging is intended to smooth out year-to-year variations in cost. Timing of reviews may affect costs—a review may span two fiscal years and reviews are not conducted at each SRO each year. Adjustments to actual costs may be made to relieve the burden on an SRO with a disproportionately large share of program costs.

The Commission's formula provides for a reduction in the assessed fee if an SRO has a smaller percentage of United States industry contract volume than its percentage of overall Commission oversight program costs. This adjustment reduces the costs so that as a percentage of total Commission SRO oversight program costs, they are in line with the pro rata percentage for that SRO of United States industry-wide contract volume.

The calculation made is as follows: The fee required to be paid to the Commission by each contract market is equal to the lesser of actual costs based on the three-year historical average of costs for that contract market or one-half of average costs incurred by the Commission for each contract market for the most recent three years, plus a pro

rata share (based on average trading volume for the most recent three years) of the aggregate of average annual costs of all contract markets for the most recent three years. The formula for calculating the second factor is: $0.5a + 0.5vt = \text{current fee}$. In this formula, "a" equals the average annual costs, "v" equals the percentage of total volume across exchanges over the last three years, and "t" equals the average annual costs for all exchanges. NFA, the only registered futures association regulated by the Commission, has no contracts traded; hence its fee is based simply on costs for the most recent three fiscal years.

This table summarizes the data used in the calculations and the resulting fee for each entity:

	Three-year average actual costs	Three-year percentage of volume	Average year 2003 fee
Chicago Board of Trade	\$81,264	34.0371	\$81,264
Chicago Mercantile Exchange	318,729	50.8784	318,729
New York Mercantile Exchange	182,492	12.4781	136,622
New York Board of Trade	87,485	2.0163	51,075
Kansas City Board of Trade	21,534	0.3022	11,866
Minneapolis Grain Exchange	12,394	0.1121	6,605
BrokerTec Futures Exchange	23,387	0.1188	12,126
Subtotal	727,285	99.8429	618,287
National Futures Association	110,946	N/A	110,946
Total	838,231	99.8429	729,233

An example of how the fee is calculated for one exchange, the Minneapolis Grain Exchange, is set forth here:

a. Actual three-year average costs equal \$12,394.

b. The alternative computation is: $(.5) (\$12,394) + (.5) (.001121) (\$727,285) = \$6,605$.

c. The fee is the lesser of a or b; in this case \$6,605.

As noted above, the alternative calculation based on contracts traded is not applicable to the NFA because it is not a contract market and has no contracts traded. The Commission's average annual cost for conducting oversight review of the NFA rule enforcement program during fiscal years 2001 through 2003 was \$110,946 (one-third of \$332,837). The fee to be paid by the NFA for the current fiscal year is \$110,946.

Payment Method

The Debt Collection Improvement Act (DCIA) requires deposits of fees owed to the government by electronic transfer to funds (See 31 U.S.C. 3720). For information about electronic payments,

please contact Stella Lewis at (202) 418-5186 or slewis@cftc.gov, or see the CFTC Web site at <http://www.cftc.gov>, specifically, <http://www.cftc.gov/cftc/cftcelectronicpayments.htm>.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, requires agencies to consider the impact of rules on small business. The fees implemented in this release affect contract markets (also referred to as exchanges) and registered futures associations. The Commission has previously determined that contract markets and registered futures associations are not "small entities" for purposes of the Regulatory Flexibility Act. Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to 5 U.S.C. 605(b) that the fees implemented here will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC, on November 12, 2004, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04-25615 Filed 11-17-04; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, December 3, 2004.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418-5100.

Catherine D. Daniels,

Assistant Secretary of the Commission.

[FR Doc. 04-25675 Filed 11-16-04; 10:29 am]

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